

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>MICHAEL ALONZA RUFUS,</b>	:	<b>PRISONER CIVIL RIGHTS</b>
<b>Plaintiff,</b>	:	<b>42 U.S.C. § 1983</b>
	:	
<b>v.</b>	:	
	:	
<b>STATE OF GEORGIA et al.,</b>	:	<b>CIVIL ACTION NO.</b>
<b>Defendants.</b>	:	<b>1:12-CV-3869-TWT-AJB</b>

**UNITED STATES MAGISTRATE JUDGE’S ORDER  
AND FINAL REPORT AND RECOMMENDATION**

Plaintiff is confined at the Jenkins Correctional Center in Millen, Georgia. Proceeding pro se, he filed a “Petition to Redress Common Law Tort of Abuse of Process with Request for Three Judge Court,” which the Clerk docketed as the complaint in this action. [Doc. 1.] Plaintiff complains of a state criminal prosecution in Walton County, Georgia that resulted in his imprisonment and seeks damages and injunctive relief. [*Id.*] Plaintiff filed an affidavit seeking leave to proceed *in forma pauperis*. [Doc. 2.]

Plaintiff cannot proceed *in forma pauperis* because he has filed, while incarcerated, at least three civil cases that were dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted. *See* Order, *Rufus v. Chapman*, No. 3:11-cv-151 (CDL) (M.D. Ga. Nov. 1, 2011); Order, *Rufus v. Pearson*,

No. 5:08-cv-205-DCB-MTP (S.D. Miss. Nov. 26, 2008); Order, *Rufus v. Fed. Bureau of Prisons*, No. 6:06-cv-3114-GRA-WMC (D.S.C. Feb. 7, 2008); Order, *Rufus v. John*, No. 6:04-cv-21905-GRA (D.S.C. Oct. 8, 2004). A prisoner may not bring a civil action in federal court *in forma pauperis* “if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Section 1915(g)’s bar applies here, and Plaintiff cannot proceed without paying the \$350 filing fee. [See Doc. 1.]

When § 1915(g) bars a prisoner from proceeding *in forma pauperis*, “the proper procedure is . . . to dismiss the complaint without prejudice.” *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11<sup>th</sup> Cir. 2002). “The prisoner cannot simply pay the filing fee after being denied *in forma pauperis* status. He must pay the filing fee at the time he *initiates* the suit.” *Id.*

Accordingly, the undersigned **RECOMMENDS** that this action be **DISMISSED WITHOUT PREJUDICE**. The Clerk is **DIRECTED** to terminate the reference to the undersigned.

**IT IS SO ORDERED and RECOMMENDED**, this 14<sup>th</sup> day of November,  
2012.



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**ALAN J. BAVERMAN**  
**UNITED STATES MAGISTRATE JUDGE**